

**WILLIAM L. MARTIN**  
Claimant

**OSAGE CITY GOLF & COUNTRY CLUB**  
Respondent

**UTICA NATIONAL INSURANCE GROUP**  
Insurance Carrier

The record and stipulations set forth in the Award of Administrative Law Judge are adopted by the Appeals Board for the purposes of this award. In addition, the parties stipulate to claimant's 10 percent functional impairment, as assessed by both Sergio Delgado, M.D., and Allen J. Parmet, M.D.

**ISSUES**

- (1) What is the nature and extent of claimant's injury and/or disability? More particularly, what, if any, is the appropriate work disability to be assessed claimant in this situation?
- (2) Did the Administrative Law Judge err in his method of computing the award under K.S.A. 1998 Supp. 44-510e?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the entire evidentiary record filed herein, including the stipulations of the parties, the Appeals Board finds the award should be modified to correct the computation of permanent partial disability benefits, but is otherwise affirmed.

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail, and the Appeals Board finds those to be accurate and supported by the record. It is not necessary to repeat those findings and conclusions herein. The Appeals Board adopts the findings of the Administrative Law Judge and the conclusions contained in his Award as its own.

In particular, the Appeals Board adopts the opinions of Dr. Parmet and Dr. Delgado that claimant suffered a 41 percent task loss and a 77 percent task loss, respectively. The Board allows equal credence to the assessments of both doctors, awarding claimant a 59 percent loss of task performing abilities.

In addition, as claimant was earning \$7.50 per hour, with no limitation as to his ability to work full-time, the Board assesses to claimant a \$300 per week post-injury average weekly wage which, when compared to claimant's \$585.57 average weekly wage, computes to a wage loss of 49 percent. In considering both claimant's task loss and wage loss under K.S.A. 1998 Supp. 44-510e, the Board awards claimant a 54 percent permanent partial disability beginning May 16, 1999.

Respondent objects to the computation method proposed by the Administrative Law Judge. The Board agrees with the respondent's objection. In awarding claimant a 10 percent functional impairment to the body as a whole, followed by a 54 percent work disability, the Administrative Law Judge computed claimant's award in a fashion different from that used by the Appeals Board and approved by the Court of Appeals. The Administrative Law Judge granted claimant 41.5 weeks of permanent partial disability compensation, which is a 10 percent impairment to the body as a whole. The Administrative Law Judge then subtracted that 41.5 weeks of disability from the 415 weeks due claimant under K.S.A. 1998 Supp. 44-510e. The resulting 373.50 weeks was

multiplied times the work disability of 54 percent, resulting in an additional 201.69 weeks permanent partial disability.

The Appeals Board's method of computing awards is as follows: The 41.5 weeks functional impairment would be the same as that awarded by the Administrative Law Judge. However, the 54 percent work disability would be multiplied times the original 415 weeks awarded under K.S.A. 1998 Supp. 44-510e, resulting in 224.10 weeks permanent disability. The 41.5 weeks of functional impairment would then be subtracted from the 224.10, resulting in 182.60 weeks of work disability benefits due and owing.

This method of computing awards has been utilized by the Appeals Board since its inception. See Deist v. Dillon Companies, Inc., WCAB Docket No. 213,485 (Dec. 1999); Walz v. Casco, Inc., WCAB Docket No. 222,827 (Dec. 1999); Thompson v. Lady Baltimore Foods, Inc., WCAB Docket No. 210,700 (Sept. 1999); and Hill v. C. R. Anthony Company, WCAB Docket No. 206,740 (June 1999). The Board's procedure for computing awards was first discussed by the Kansas Court of Appeals in Bohanan v. U.S.D. No. 260, 24 Kan. App. 2d 362, 947 P.2d 440 (1997), and affirmed by the Kansas Court of Appeals in Wheeler v. Boeing Co., 25 Kan. App. 2d 632, 967 P.2d 1085 (1998), *rev. denied* \_\_\_\_ Kan. \_\_\_\_ (1999). In Wheeler, the Kansas Court of Appeals found the Board's computation method to be a proper interpretation of K.S.A. 1997 Supp. 44-510e.

The Appeals Board finds that the method of computing awards utilized by the Administrative Law Judge contradicts K.S.A. 1998 Supp. 44-510e. The Appeals Board will, therefore, correct the computation error in its award.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated December 30, 1999, should be, and is hereby, affirmed, but the award computation is modified, and claimant is awarded a 10 percent permanent partial functional impairment, followed by a 54 percent permanent partial disability to the body as a whole, for his injuries suffered on June 9, 1998, and August 29, 1998, while employed with respondent, Osage City Golf & Country Club.

Claimant is awarded 41.5 weeks permanent partial functional disability at the rate of \$351 per week totaling \$14,566.50 pursuant to the stipulation of the parties. Thereafter, from May 16, 1999, claimant is awarded a 54 percent work disability resulting in an additional 182.6 weeks permanent partial disability compensation at the rate of \$351 per week in the amount of \$64,092.60, for a total award of \$78,659.10.

As of May 30, 2000, there would be due and owing to claimant 41.5 weeks of permanent partial disability compensation at the rate of \$351 per week in the amount of \$14,566.50, followed thereafter by 61.5 weeks of permanent partial disability compensation at the rate of \$351 per week in the amount of \$21,586.50, for a total of \$36,153.00, which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance in the amount of \$42,506.10 shall be due at the rate of \$351 per week for 121.10 weeks until fully paid or until further order of the Director.

In all other regards, the Award of the Administrative Law Judge is affirmed insofar as it does not contradict the opinions contained herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: George H. Pearson, III, Topeka, KS  
Frederick L. Haag, Wichita, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director